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August 25, 2003

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Comment on
AOR 2003-24

Re: Advisory Opinion Request 2003-24

Dear Mr. Norton:

I write on behalf of the Campaign Legal Center regarding Advisory Opinion Request (AOR) 2003-24, submitted by the National Center for Tobacco Free Kids (NCTFK). NCTFK seeks permission to use information in FEC reports identifying the names and addresses of contributors to federal candidates and political committees to undertake certain communications with these persons.

2 U.S.C. § 438(a)(4) states that the FEC must make reports and statements filed with the agency available for public inspection and copying. However, it further indicates a limitation: "any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." 11 C.F.R. § 104.15 implements this limitation.

In past Advisory Opinions, the FEC has correctly recognized that 2 U.S.C. § 438(a)(4)'s prohibition on the use or sale of information copied from Commission reports or statements extends only so far as such use or sale is for the purpose of soliciting contributions or for commercial purposes. Conversely, it has stated that "the Act permits communications to persons whose names were obtained from reports of contributors as long as no solicitation or commercial purpose is involved." See FEC Advisory Opinion 1995-5. Thus, in Advisory Opinion 1981-15, a House Member was permitted to contact individuals identified in FEC reports as contributors to his opponent in the preceding general election, to rebut allegedly defamatory charges. Likewise, in Advisory Opinion 1984-2, a federal candidate was permitted to write to persons identified as contributors to a political committee, to clarify that the committee was not his authorized committee (though he could not also indicate that these persons could instead make a contribution to his authorized committee). The Commission indicated in this Advisory Opinion that the prohibition of 2 U.S.C. § 438(a)(4) "is not intended to foreclose the use of [contribution information taken from disclosure documents filed under the Act] for other, albeit political, purposes."

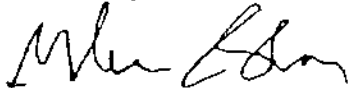
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In addressing the facts presented in AOR 2003-24, we urge the Commission to continue to recognize the boundaries of the statutory prohibition at 2 U.S.C. § 438(a)(4). Where the use or sale of information copied from Commission reports or statements is not for the purpose of soliciting contributions or for a commercial purpose, such activity is neither forbidden by this provision of the Federal Election Campaign Act nor implicates its purposes.¹

Thank you in advance for your consideration of these comments.

Sincerely,



Glen Shor
FEC Program Director

¹ In past Advisory Opinions, the Commission has identified these purposes as "protect[ing] the persons who make contributions . . . from victimization by the practice of list brokering or selling" (FEC Advisory Opinion 1977-66), "protect[ing] contributor information and lists from being used for commercial purposes" (FEC Advisory Opinions 1980-78, 1981-101 and 1981-38), "protect[ing] individual contributors from having their names used for commercial purposes, or from inclusion on contributor lists that are used for commercial purposes" (FEC Advisory Opinion 1981-5), "prevent[ing] list brokering, not [] suppress[ing] [] financial information" (FEC Advisory Opinions 1981-38 and 1984-2), "protect[ing] contributor information and lists from being used for contribution solicitation or for commercial purposes" (FEC Advisory Opinion 1984-2), "prevent[ing] the use of contribution information taken from disclosure documents filed under the Act to make solicitations" (*Id.*), "protect[ing] individuals who make contributions to campaigns from being victimized by list-brokering" (FEC Advisory Opinions 1985-16 and 1988-2), "protect[ing] [] individuals who make contributions to political committees from having their names used for commercial purposes, not [] suppress[ing] [] financial information" (FEC Advisory Opinion 1989-19), "encompass[ing] commercial purposes that could make contributors vulnerable to all kinds of solicitations" (FEC Advisory Opinion 1995-5), and "protect[ing] individual contributors from having their names sold or used for commercial purposes." (FEC Advisory Opinions 1995-9 and 1998-4).